

**TIGARD WATER DISTRICT  
BOARD of COMMISSIONERS  
SPECIAL MEETING**  
Serving the Unincorporated Area

**Monday, March 20, 2006  
7:00 p.m.**

**Members Present:** George Rhine, Janet Zeider, Marc Delphine, Charles Radley, Beverly Froude

**Staff Present:** Public Works Director Dennis Koellermeier  
Recorder Greer Gaston

**Visitors:** Madalyn A. Utz, Ray Utz, Phil Decker, LaVelle Haas, Jeff Cameron, Helen Honse, Patti Fowler, Kinton Fowler, John Carter, Roy Kindrick, Janice Kindrick, Luciana Lopez, Ken Henschel, Lisa Hamilton-Treick, Kesmira McVey, Judy Carter, John Barth (sp?), Wynne Wakkila, Tom Ruyusson (sp?)

**1. Call to Order, Roll Call and Introductions**

The Tigard Water District (TWD) meeting was called to order by the Chairperson, Commissioner George Rhine, at 7:04 p.m. and staff called roll.

**2. Discussion of the Friends of Bull Mountain's Request to Fund the Comprehensive Feasibility Study Required for Incorporation**

Commissioner Rhine introduced Keshmira McVey, a representative of the Friends of Bull Mountain. Ms. McVey provided the Commissioners with a map and distributed a handout regarding the group's request for the Tigard Water District (TWD) to fund the comprehensive feasibility study. The map and handout are on file in the TWD record. Ms. McVey read the handout to the Commissioners which requested the TWD's financial support in funding the economic feasibility study for the Friends of Bull Mountain in the amount of \$34,000. She referred to the newly formed City of Damascus as precedent.

The feasibility study is scheduled to be completed by mid-April and then reviewed with county officials and submitted as part of the petition for incorporation. It would form the basis of the long-range planning needs and all the urban services that are required, including water, sewer, parks, police, etc.

The costs for the economic feasibility study are based on estimated time and materials compared with the study the consultant performed for Damascus.

There are over 250 active members of Friends of Bull Mountain.

Commissioner Rhine opened up the meeting for comments from citizens.

**Phil Decker**, 14540 SW 148<sup>th</sup> Place, unincorporated Bull Mountain.

As a former judge pro-tem and licensed attorney in California (not Oregon), Mr. Decker could not lend his name to the support of Mr. Radley's report, and he therefore reluctantly resigned from the

Tigard Water District

March 20, 2006

Steering Committee. Mr. Decker was in opposition of any loan, grant, or gift to the Friends of Bull Mountain or similar organization that seeks to obtain public or quasi public funds for their own purposes.

1. Friends of Bull Mountain is a non-profit organization, but not a public, quasi-public, or any type of government organization.
2. The TWD board does not have legal jurisdiction to write a check to any entity and he advised the board to obtain a legal opinion.
3. The TWD is not an ATM machine, but an official governmental representative of the water rate payers and their interests regarding water rates, services and planning. The Board has ample opportunities within its own resources to obtain information without paying for this study that others say is needed. The TWD is running the show and does not need Friends of Bull Mountain to do anything on their behalf unless specifically contracted to do so.

Mr. Decker questioned whether the TWD had the authority to do what was being asked by using rate payer money to fund the request from Friends of Bull Mountain. He was concerned that Mr. Radley had a conflict of interest, was biased and prejudice on the issue at hand and should disqualify himself from discussions and voting on the matter.

Commissioner Radley commented that he also questioned some issues like legal jurisdiction. He said the report Mr. Decker referred to was a CPO4B governance study that was a team effort where he acted as chair or facilitator for the committee and wrote a minimal portion of the report that focused on the option of annexing to King City. It was a gross inaccuracy to refer to the report as his.

Mr. Decker stated that the title page would speak for itself. Commissioner Radley said it was a CPO report and he applauded the other CPO members that worked on the report.

Commissioner Delphine asked Mr. Decker how the Damascus feasibility study for incorporation differed from this issue and Mr. Decker responded simply that nobody challenged it in court. Legal advice was again recommended.

**Ken Henschel**, 14530 SW 144<sup>th</sup> Avenue, unincorporated Bull Mountain.

He stated he was the Chair of CPO4B. The CPO represents the unincorporated Bull Mountain and part of Tigard and recently completed a study of governance options; it was an unbiased report with five different governance possibilities. Mr. Radley was one of ten volunteers who helped with the report. The report is available in the Tigard Public Library.

Commissioner Radley distributed a handout containing minutes from the Sunrise Water Authority (SWA). The handout is on file in the TWD records. He stated he had met with the Sunrise Water Authority to find out what they had done for Damascus. He said there were differences in the organizations and this may not be applicable to this situation. ORS 279 has been amended since the formation of Damascus. Sunrise Water Authority was organized under ORS 450 which is different. He agreed there should be legal review.

Commissioner Froude recommended hearing from Mr. Koellermeier the history of why SWA was different than this situation. Commissioner Radley stated there was a memorandum of understanding (MOU) that was created made up of Clackamas County entities, including the fire district and SWA.

The discussion continued with Commissioner Delphine indicating that the Board represented the residents of the district, 90% of which reside on Bull Mountain, and considered it the Board's

responsibility to these people to see the feasibility study through. Commissioner Rhine stated the Board's purview was water, not governance. The issue of precedence set by Damascus was further discussed and the major portion of the Board considered it would not be wise to use SWA as an example since they may or may not have acted within legal bounds. Legal advice would be required before making any decision.

**Lisa Hamilton-Treik** – 13565 SW Beef Bend Road, unincorporated area.

She is a Director of Friends of Bull Mountain. She was surprised by Mr. Decker's comments as he was a strong supporter of Friends of Bull Mountain, testified at the state offices, then abruptly resigned from the Steering Committee. She considered Mr. Decker's negative comments biased by personal feelings about Commissioner Radley. The Friends of Bull Mountain is not asking the Board to do something outside their authority, but would appreciate support.

Commissioner Froude stated that Mr. Decker's comments were in no way solicited, the Board had no prior contact with him, and Mr. Decker was entitled to his viewpoints on the issue.

**Wynne Wakkila** - 15522 SW 141<sup>st</sup>, unincorporated area.

This long process began over two years ago. She hoped the TWD would support them.

Public comment was closed.

Mr. Koellermeier explained what his research on the issue found. No staff recommendation would be made, but he would express questions, issues, and concerns staff thought the board should consider before making and determination:

- Very little known about the study
- Obtain scope, schedule and author's credentials
- Contract between author and owner
- Legal status of owner and can they accept public funding
- Obtain written statement from owner explaining in detail how the study would benefit the TWD. How can 100% of the value of the study be attributed to the TWD when they did not commission the study? Partial funding may be considered.
- Tigard Community Development Director, Tom Coffee, who is familiar with the contents of an economic feasibility study, said he did not believe the study would be beneficial or valuable to the TWD.
- Mr. Coffee also said the county intends to do planning in areas 63 & 64 and this information would be available to the TWD free-of-charge.
- Areas 63, 64, and entire TWD boundary has already been studied in a master plan
- Total cash assets of the TWD = \$104,481
- Income to TWD = \$14,666 annually (1% of retail sales and interest earned on balance)
- Current request from Friends of Bull Mountain = 32.5% total cash assets
- Board has no adopted policy in place regarding donations
- Who would the board be providing funds to, Friends of Bull Mountain, the consultant?
- Has a contract been prepared?
- What guarantees are there that the study will be completed?
- Would a donation to Friends of Bull Mountain be deemed a legal expense per state law? If determined an illegal expense, it is possible the board and its members could be held personally liable to reimburse the funds.
- Recommended the Board get legal advice before proceeding.
- Any resident within the district can challenge an expenditure.
- Substantial differences between a water district (TWD) and a water authority (SWA) and are formed under two different laws. Water authority cannot be taken over by a city but can exist

- if it so chooses; with a district, a city could form and withdraw territory from the district, or a district could reside within a city for a long time and dissolve when territory is withdrawn
- Political issues affected the Damascus situation according to the SWA general manager, but the major determining factor was to keep Clackamas River water in the Clackamas basin and keep Multnomah County and Gresham from infringing upon them.
  - If the board funds the request and the action is challenged, the board will incur the cost to defend itself.
  - If the Board was interested in pursuing the request, he recommends they seek legal advice and answers to these questions and concerns.

Commissioner Delphine asked if the TWD would dissolve if Bull Mountain were incorporated or annexed by Tigard. Mr. Koellermeier responded that if Tigard annexed Bull Mountain, there is a process the city follows to withdraw areas from the district and place in the city. There could be an arrangement where a district continues to operate within a city and the Tualatin Valley Water District is a good example of that. There are areas in the TWD that fall outside the Bull Mountain study area and those customers would still need some type of representation. The Board could continue to operate or could turn the function over to the county to operate on behalf of those customers. Another aspect that affects the decision would be the existing agreement between the TWD, city and the IWB which requires a 10-year notice to terminate the contract on either side.

Commissioner Radley expressed his thanks to his fellow Commissioners for participating in this special meeting. He felt obligated to bring the issue before the public.

Ms. McVey commented that the study was underway and scheduled to be completed in mid-April. Costs are being incurred and are payable 30 days following the completion of the study, therefore, time is of the essence. Commissioner Radley commented on the issue of IGA & MOU and reported that one other district in the area has been contacted regarding funding of the study.

Commissioner Rhine summarized the two issues at hand: obtaining legal opinion of the Board's ability to make such a decision and whether the TWD has the desire and would it benefit them to spend 32% of the total revenues to fund the study.

There was some discussion about the timeline for Friends of Bull Mountain and Commissioner Delphine suggested expediting things by talking with an attorney right away. Commissioner Froude said the next meeting is scheduled for April 24th.

Commissioner Radley commented on spending the 32% of cash on hand for this study, considered it a bad idea for any public agency to be sitting on money and not doing anything with it. Commissioner Rhine said that source of water was a very important subject and it was important to examine how spending the money now could perhaps deprive the TWD of participating in water related studies in the next twenty or fifty years.

Commissioner Rhine terminated the discussion on the Friends of Bull Mountain proposal, stating the Board would take the request seriously, but it was a new issue with no prior policy. He understood the urgency on behalf of the Friends of Bull Mountain, but was not inclined to make that the District's sense of urgency. The Board needed to figure out what to do and get legal advice.

**Commissioner Radley made a motion for the Board to engage legal counsel to determine if the Board has the authority to entertain the Friends of Bull Mountain's request to fund the comprehensive feasibility study. Commissioner Zeider seconded the motion. The motion was approved by unanimous vote.**

Commissioner Rhine was not sure if Clark Balfour was available to represent this issue, but advised staff to contact Mr. Balfour to find out if he would expand his scope to include this issue. Ms. Hamilton-Treik expressed her concern about using Mr. Balfour as representation. Commissioner Rhine stated that Mr. Koellermeier has had no contact with the attorney, but has taken direction from the Chairman of the Board.

Ms. Hamilton-Treik stressed the need for unbiased legal counsel, asked for clarity of duties and responsibilities with clear boundaries for the attorney representing the interests of water district rate payers. Commissioner Delphine said he received calls from residents questioning the involvement and interests of the attorney.

**(Per motion of TWD Board in meeting on October 23, 2006, see attached Addendum of these minutes. Addendum to Minutes includes the verbatim portion of the minutes that are summarized above.)**

### **3. Discussion of the Bylaws and Bylaw Modifications**

Commissioner Rhine commented that the bylaws were out-of-date and were done when the TWD operated as its own entity before the IWB agreement. He thought there should be new bylaws, but was not sure what legal process to follow for adopting a new set. Staff research suggests consulting the Board's attorney.

Commissioner Radley said two sections seemed to conflict with each other and suggested creating bylaws that would reconcile the conflicting sections. It was suggested that other water districts be contacted that may have similar structure to the TWD and review their bylaws. Commissioner Radley said the current bylaws were not bad and thought they were typical of water district bylaws. Commissioner Rhine said there were some areas they have not been conforming to and some areas that were not applicable. Commissioner Radley noted the provision states the Board must meet monthly.

Wynne Wakkila suggested using the phrase "in accordance with state law" in policy and procedures manuals, etc., then when state law changes the core is still in place.

Ken Henschel said he was appalled the Board was not intimately familiar with the bylaws. He received a copy of the bylaws and can see areas where the Board is not complying with the bylaws. He recommends the Board thoroughly study and know the operating procedures.

Commissioner Rhine explained that this TWD Board of Commissioners is far different than when these bylaws were created and pointed out that this was done before the agreement with Tigard. The current board has used the bylaws where it seems to fit and with these new developments, it does not fit well. Commissioner Froude stated that the TWD was an independent board in one way, but they were part of the larger organization of the IWB and decisions for the entire area have been made by the IWB representatives. Commissioner Rhine said it was clear they needed to revise the bylaws and operating procedures.

Mr. Koellermeier recommended that this issue should also be referred to legal counsel. He further suggested the Board of Commissioners review the bylaws and work on what needs to be changed. He will look for similar bylaws in similar agencies. Commissioner Rhine asked other board members to review and mark up bylaws and bring those suggested changes to the next meeting. He will contact their attorney and discuss what procedures to take to make the changes.

Commissioner Radley made a motion for the board to contact an attorney in order to determine the process to change the bylaws, taking into account updates in the law, and to consider the effect that the 1993 intergovernmental agreement has on the bylaws. Commissioner Delphine seconded the motion. The motion was approved by unanimous vote.

Mr. Koellermeier touched on the issue about whether he could be unbiased. Depending on board direction, which has been far more active on various issues over the last six months, he may not be able to represent the TWD and the city. Consider, along with the bylaws and rules, the context of the budget and if city staff cannot represent at this level of activity. If city staff removes themselves from Board representation, the replacement would be a substantially higher cost as compared to city. It is possible that the Board and City will have a conflict of interest. Another issue is the volume of work, as an example, he received 27 emails in the last month and a half, which is about 20 more than he has received from the entire board over the last five years. So there is a definite change in volume.

Commissioner Froude said that was a good discussion point and they needed to understand that this has been an interim board from 1993 until now. This issue is part of the larger picture. Perhaps the Board should discuss why the TWD should have the City of Tigard as administrative staff. Commissioner Rhine said that under the circumstances may at some point be appropriate to terminate and hire someone else, but recognize it will be at a higher rate to have that done.

Wynne Wakkila policies set aside from operating procedures.

Commissioner Froude asked if they could be provided a defining map, past and present, depicted the district and how the creation of a new city might impact the district. Mr. Koellermeier said the last one he knew of was done in the mid-80s. He will arrange for an updated map of the district boundaries.

Mr. Koellermeier commented that the next major piece of work to be formulated was the budget for next year. He suggested more guidance in the budget process than has been in the past.

#### **4. Discussion of Section 2.02C of the Bylaws Related to the Chairperson's Term of Office**

The current bylaws say the chair serves only one consecutive term. Past practice has not been in compliance with this section.

Staff reported that ORS 264 no longer contains regulations limiting terms of office.

Commissioner Delphine moved we table this motion until they could consult with an attorney. No second and the motion died. However, discussion continued and the Board decided to leave the issue until later.

#### **5. Adjournment**

At 8:41 p.m. Commissioner Delphine motioned to adjourn the meeting, Commissioner Froude seconded the motion, and the motion was approved by unanimous vote.

# ADDENDUM TO MINUTES

## VERBATIM PORTION OF MINUTES

### Tigard Water District

### Special Meeting – March 20, 2006

(Bottom of page 4)

Commissioner Radley made a motion for the Board to engage legal counsel to determine if the Board has the authority to entertain the Friends of Bull Mountain's request to fund the comprehensive feasibility study. Commissioner Zeider seconded the motion. The motion was approved by unanimous vote.

The verbatim minutes begin following this motion. (Top of page 5)

Commissioner Rhine: Thank you Charles. Um, we've got to find somebody that can represent us in this because I'm not sure Mr. Balfour is, ah, available. Um, we, we'll give him a call. He, he's currently got this other project that he's working on.

Dennis Koellermeier: Yeah. So you would like me to call Mr. Balfour and see if he'd expand his scope to deal with this issue? Is that your first choice?

Janet Zeider: Ah, ha.

Dennis Koellermeier: Okay.

Lisa Hamilton Treick: (*?-Too soft to understand*) There is great concern about who is representing who and...

Greer Gaston: Lisa, could you come up so we can get what you're saying on tape please. Thank you.

Lisa Hamilton Treick: I, uh, you may recall the proposition left before, a month or so ago. Um, there's an old saying about the fox guarding the hen house and I'm sorry, please don't take that personally, um, Dennis, but, um, I really don't think that it's unwise representation to diverge to the City of Tigard...

Commissioner Rhine: Now Dennis, Dennis has not been involved with any of the discussions with Mr. Balfour. That's been me as the chairman of the board. The only thing he's done is, is made some, some initial contacts and since the personal service agreement, we don't have the ability to pay directly. They hold the funds, then the personal service agreement for the, uh, the, basically the work items, uh, what he's going to do, how much he's going to charge and everything else, are negotiated with the City of Tigard and then I say go ahead and pay it.

Lisa Hamilton Treick: Okay, well I would just ask for, um, some clarity about where the duties and responsibilities lie and, um, uh, I, I just am very uncomfortable about the boundaries not being clear about, um, communications with an attorney who is supposed to be representing the best interests of the water district rate payers.

Commissioner Rhine: Right.

Lisa Hamilton Treick: And I would really respectfully request that there be some very clear boundaries about that communication and, and representation. Um, I would not want to rely on the City of Tigard to...

Commissioner Rhine: We're not going to ask, we're not asking the City of Tigard to come out with a legal opinion about this issue at all.

Lisa Hamilton Treick: I, I, I'm a, uh, uh, a real estate broker, and I guess I'm hyper sensitive to representation. Some people don't realize the critical nature of that, and I live and work it every day, so I'm extremely sensitive...

Commissioner Rhine: Okay.

Lisa Hamilton Treick: ...to representation, and I would just ask that the Tigard Water District Board take representation very seriously in terms of the communication and, and whose best interests are being represented.

Commissioner Rhine: Okay. Thanks for your interest.

Commissioner Delphine: I'd like to join in because I've actually gotten a couple of phone calls from ah, from residents of Bull Mountain stating that our counsel might not necessarily be um, or, not necessarily bad, but, but is questioning ah, his involvement as to (TRAIN WHISTLE) what side is he on. What side is he on? Is he on City of Tigard? Or is he on Bull Mountain? I mean, is he on Tigard Water, you know, Tigard Water District's side? (TRAIN WHISTLE) And I had, I had no idea, so it kind of curbed a flag on what we know (TRAIN WHISTLE), I mean is something ...

Lisa Hamilton Treick: (TRAIN WHISTLE) ...a crystal, clear picture of who's being represented and who our info. is talked ... (TRAIN WHISTLE)...

Commissioner Rhine: Okay. Thank you.

Lisa Hamilton Treick: Thank you for letting me make that additional comment.

Twila Willson  
Twila Willson, TWD Recording Secretary

Date: Oct. 26, 2006 (revised minutes)